

(To be held **May 27, 2015 Montana DEQ 1520 E 6<sup>th</sup> Avenue, Helena, 2-4 pm**)

**1. Budget**

- a. 2015 Status
- b. 2016

**2. Planning**

- a. Joint Environmental Priorities
  - i. State
  - ii. EPA
- b. New legislation (**State/EPA**)
  - i. 2015 Environmental legislations of note
  - ii. Planning for any interim committees

**3. RAC**

**4. Multiyear PPA**

**5. Suggested state directors meetings topics/ speakers**

**6. Programmatic Issues**

- a. Billings, Montana 1-Hour SO<sub>2</sub> Nonattainment Area
- b. Clean Air Act Section 128 State Board Requirements for Infrastructure State Implementation Plan (SIP)
- c. CAA Section 111(d) Standards for Existing Power Plants
- d. CAA Section 111(b) Standards for New Power Plants
- e. Ozone
- f. Clean Water Rule
- g. Working relationships with EPA, MDEQ, and NRDP
- h. Libby
- i. Drought related project update

Agenda

1. Bridger Pipeline Spill in Glendive, Montana
2. MT Electrical Conductivity (EC)/Sodium Adsorption Ration Water Quality Standards (SAR)
3. Montanore Draft Record of Decision (ROD)
4. Columbia Falls Aluminum Site, Montana
5. NPDES Permit for Boulder, MT and Implementation of Nutrient Variance

**Topic: Budget Updates: State & Tribal Assistance Grant (STAG) Funds**

**FY 2015 Enacted Budget, STAG Appropriation Summary – Agency Level**

- STAG level is \$3.55B, a \$10M (0.3%) increase over the FY 2014 Enacted level of \$3.54B
- Changes include a \$10M (50%) increase for both DERA and \$10M for Targeted Airshed Grants (*previously \$0*), offset by a \$10M (11%) decrease in Brownfields Grants
- Categorical Grant funding remained the same for all grants as compared to FY 2014 funding levels; total funding for all categorical grants: \$1.05B
- Provides \$2.4B in grants to states for local drinking water and sewer construction projects through the Clean Water and Drinking Water State Revolving Funds (*no change from FY 2014 funding levels*)

**Status of FY 2015 Region 8 STAG funds**

- The Enacted Op Plan for STAG funds was received on February 23, 2015
- Regional STAG funds were issued February 25, 2015
- For FY 2015, Region 8's Enacted Op Plan for STAG is \$169.4M, compared to FY 2014 Enacted Operating Plan amount of \$169.8M. This is a decrease of \$404k (0.2%), due to decreases in Categorical Grants allowances to the Region.
- Categorical Grant funds were decreased by \$585.1k (1.0%), from \$60.8M in FY 2014 to \$60.2M in FY 2015. The largest decrease was in State & Local Air Quality Management grants, a \$630k (6.8%) decrease.

**STAG Outlook for FY 2016 – Agency Level, based on FY 2016 President's Budget\***

- \$3.6B STAG funding, a \$54M (1.5%) increase from FY 2015 Enacted
- \$1.12B for Clean Water SRF, a \$333M (23%) decrease from FY 2015 Enacted
- \$1.19B Drinking Water SRF, a \$279M (31%) increase from FY 2015 Enacted
- **Other significant increases from FY 2015 Enacted:** +\$40M (+18%) for State & Local Air Quality Management; +\$30M (+38%) for Brownfields; +\$31M (+47%) for GAP
- **Other significant decreases from FY 2015 Enacted:** -\$20M (-67%) for DERA; Elimination of Targeted Airsheds (-\$10M), and Radon (-\$8.1M)

*\*Agency-level amounts are shown because regional allowances are not determined, for all programs, during President's Budget; allowances are determined for the Enacted Budget.*

**Contact:** Ben Bielenberg, 312-6771

**Montana 2015 Midyear**

<b>GRANT</b>	<b>FY15 ENACTED</b>	<b>FY14 ENACTED</b>	<b>FY15 Enacted vs. FY14 Enacted</b>	<b>FY16 Pres Bud</b>	<b>FY16 Pres Bud vs. FY15 Enacted</b>
Air Quality*	\$8,571.0	\$9,201.0	(\$630.0)	\$0.0	(\$8,571.0)
Tribal Air Quality*	\$1,599.0	\$1,599.0	\$0.0	\$0.0	(\$1,599.0)
Radon*	\$604.0	\$604.0	\$0.0	\$0.0	(\$604.0)
Water Section 106	\$15,254.0	\$15,388.0	(\$134.0)	\$16,781.0	\$1,527.0
Nonpoint Source	\$12,919.0	\$12,969.0	(\$50.0)	\$13,387.0	\$468.0
Wetlands *	\$1,575.9	\$1,573.0	\$2.9	\$0.0	(\$1,575.9)
Public Water Systems	\$7,145.0	\$6,983.0	\$162.0	\$7,731.0	\$586.0
Underground Injection	\$1,452.0	\$1,391.0	\$61.0	\$1,421.0	(\$31.0)
Haz. Waste Financial Asst.	\$3,188.0	\$3,123.0	\$65.0	\$3,188.0	\$0.0
Brownfields	\$200.0	\$190.0	\$10.0	\$200.0	\$0.0
Pesticides Implementation	\$1,178.0	\$1,178.0	\$0.0	\$1,178.0	\$0.0
Lead	\$697.0	\$697.0	\$0.0	\$697.0	\$0.0
Toxics Substance Compliance*	\$408.0	\$408.0	\$0.0	\$0.0	(\$408.0)
Pesticides Enforcement*	\$1,948.0	\$2,027.0	(\$79.0)	\$0.0	(\$1,948.0)
Pollution Prevention	\$381.0	\$381.0	\$0.0	\$381.0	\$0.0
Tribal General Asst.	\$3,055.0	\$3,048.0	\$7.0	\$3,055.0	\$7.0
<b>TOTAL Categorical Grants</b>	<b>\$60,174.9</b>	<b>\$60,760.0</b>	<b>(\$585.1)</b>	<b>\$48,019.0</b>	<b>(\$12,148.9)</b>
Clean Water SRF	\$46,670.0	\$46,603.0	\$67.0	\$35,643.0	(\$10,960.0)
Drinking Wtr SRF	\$62,506.0	\$62,388.0	\$118.0	\$81,630.0	\$19,242.0
Diesel Emissions	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0
Targeted Airshed	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0
Brownfields Projects	\$96.0	\$100.0	(\$4.0)	\$96.0	(\$4.0)
<b>Total STAG Special Program Grants</b>	<b>\$109,272.0</b>	<b>\$109,091.0</b>	<b>\$181.0</b>	<b>\$117,369.0</b>	<b>\$8,278.0</b>

Budget Information

**Montana 2015 Midyear**

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<b>GRANT</b>	<b>FY15 ENACTED</b>	<b>FY14 ENACTED</b>	<b>FY15 Enacted vs. FY14 Enacted</b>	<b>FY16 Pres Bud</b>	<b>FY16 Pres Bud vs. FY15 Enacted</b>
<b>Total STAG Appropriation</b>	<b>\$169,446.9</b>	<b>\$169,851.0</b>	<b>(\$404.1)</b>	<b>\$165,388.0</b>	<b>(\$3,870.9)</b>

*\*Regional allowances for these programs are not determined during President's Budget;  
allowances are determined for the Enacted Budget*

## Montana 2015 Midyear

### Topic: Budget Updates: 2015 PPG Current Status

**Background:** We have awarded approximately 20% of Montana's grant funds in FY15.

#### Key RA Message:

We expect to award the remaining available grants funds by mid-May 2015. Pollution Prevention funds will follow at a later date since those are competitive grants. Environmental categories that are forward funded will be awarded before September 30, 2015.

PPA Program Area	2014 Total Awarded	2015 Projected Award				
			Award#1	Award#2	Total Award	Balance to be
	Award Dates		Nov 2014	May 2015	Amount	Awarded
Air Quality	\$1,292,041	\$1,289,125	\$205,790	\$954,422	\$1,160,212	\$128,913
Water Pollution	\$2,426,000	\$2,426,000	\$683,664	\$1,742,336	\$2,426,000	(\$0)
Nonpoint Source	\$0	\$0			\$0	\$0
Drinking Water	\$1,326,000	\$1,358,000	\$260,337	\$1,097,663	\$1,358,000	\$0
UIC	\$0	\$0	\$0		\$0	\$0
Haz Waste Mgt.	\$169,628	\$235,008	\$34,390	\$200,618	\$235,008	(\$0)
Haz Waste(Comp Assist)	\$162,730	\$98,095	\$24,616	\$73,479	\$98,095	(\$0)
Radon	\$35,000	\$35,000	\$6,942	\$28,058	\$35,000	\$0
Pollution Prevention	\$0	\$0	\$0		\$0	\$0
Lead insp/enf.	\$0	\$0			\$0	\$0
PCBs/asbestos	\$0	\$0			\$0	\$0
Lead program	\$0	\$0			\$0	\$0
<b>Total</b>	<b>\$5,411,400</b>	<b>\$5,441,228</b>	<b>\$1,215,740</b>	<b>\$4,096,576</b>	<b>\$5,312,316</b>	<b>\$128,912</b>

The remaining award amounts are waiting for program approvals.

**Contact:** Anthony DeLoach, 312-6070

Budget Information

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**Topic: New Hazardous Waste State Grant Distribution Methodology and FY2016 Allocation - Region 8 Impacts**

**Background:**

- As part of the FY2014 President's Budget submission, OMB requested that EPA assess the RCRA state grant allocation formula for the state hazardous waste grants.
- The RCRA State Grant Allocation Formula Workgroup was made up of representatives of all ten regions to develop options and recommendations for aspects of the grant allocation formula, considering EPA's national program priorities/vision, and the current and future state program workload.
- Nationally, funding levels have been steady and the RCRA program receives approximately \$98 million in STAG grant funding annually, of which Region 8 receives approximately \$3.1 million for the R8 states.
- When the new STAG Grant Allocation formula is fully implemented in FY2020, R8 will receive \$3.4 million in grant funding.
- The Region will use discretion to allocate funding.
- STAG funding accounts for 75% of state RCRA program funds; the mandatory state match is 25%.
- The new formula will be phased in over 5 years.
- The current suggested national state minimum is \$350K per state; headquarters suggests increasing the minimum to \$400K per state. Not all states require the state minimum to operate a successful RCRA program. R8 RCRA will evaluate the needs of the states and Region in order to prioritize and allocate funding.
- The larger states (UT and CO) are concerned that the nationally recommended state minimum will decrease their hazardous waste funding.
- Region 8 will use regional flexibility to ensure funding levels are consistent with historical funding levels. The Region considers funding based on universe size, workload, prior expenditure rates, program performance, and relative need across the states within the region.

**Contacts:** Nancy Morlock, OPRA/RCRP, 312-6421; Moyer Lin, OPRA RCRP Hazardous Waste, 312-6667

**Key RA Messages:**

- Headquarters has projected Region 8's STAG funding to increase as a result of the new allocation formula (approx. 6% increase over next 5 years).
- RCRP will hold conference calls with individual states to discuss phase in of the new formula and program needs by the end of April 2015.
- The regions have flexibility in determining individual state allocations based on a variety of factors.
- **The new formula will be phased in starting in FY16. At this time, RCRP does not anticipate more than a 1% change in funding for the R8 states in FY16.**

**Note to Deb and Shaun from Melanie:**

**You had requested to know how much the state would be getting now vs. under the new formula. Since the new formula will not start to be used until FY16 and we do not have an FY16 budget yet, RCRP is not able to provide projections for FY16. In addition, Nancy indicated that the new formula will be phased in over 5 years. Nancy is not expecting more than a 1% change to their budget in FY16.**

Budget information

## Montana 2015 Midyear

Clean Power Plan \_\_\_\_\_  
 Clean Water Rule \_\_\_\_\_

EPA Region: 8

2015 State Legislative Session Tracker

Contact: Rebecca Russo, 303-312-6757

Please include laws and Resolutions

State	Bill Number (URL)	Short Title/Description	Passed/Failed out of Committee (Date)	Passed/Failed out of Legislature (Date)	Signed/Vetoed by Governor (Date)	Notes
MT	SJR 13	Resolution Supporting Coal: Resolution supporting the responsible development of coal resources and coal-based electricity; supports expansion of additional shipping capacity to allow for the sale of MT resources to emerging markets.		On 4/11, Passed House  On 2/26, Passed Senate	4/20/15: Eligible for Governor's Signature	Sponsor: Duane Ankney (Senate R)
MT	SJR 17 Aka Draft 543	Interim Study Regarding Coal Phase Out. Study to investigate the impacts of phasing out and eliminating the mining and burning of coal.	4/20/15: Pending – Tabled (as of 4/8)			Sponsor: Mike Phillips (Senate D)

Legislation Information

Light Gray = Bills that are postponed indefinitely, missed the transmittal deadline, are on hold or failed.

Gray = New from last update.

Dark Gray = Bills that have passed at least one Chamber.

Darker Gray = Enacted or Adopted

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# Montana 2015 Midyear

State	Bill Number (URL)	Short Title/Description	Passed/Failed out of Committee (Date)	Passed/Failed out of Legislature (Date)	Signed/Vetoed by Governor (Date)	Notes
MT	MT SB 236 2015	Regulation of Carbon: Limits authority to regulate carbon to the discretion of the Legislature. Provides for legislative involvement in the development of a state plan to address GHG emissions from fossil fuel-fired electric generating units. Requires legislative approval of the DEQ State Plan.	3/24/15: Failed – Tabled			Sponsor: Roger Webb (Senate R)  <a href="http://leg.mt.gov/bills/2015/billpdf/SB0236.pdf">http://leg.mt.gov/bills/2015/billpdf/SB0236.pdf</a>
MT	MT S 402	Laws Related to utilities and Coal Fired Generation. Purpose: provide financial partnership between state and local gov and owners of coal-fired generating facilities; to provide for a timely transition in regional energy policy without adversely affecting tax revenue. Seems to require a notification if any coal-generating plant or unit will close.  Basically, bill would levy fees against companies that shut	4/20/15: Pending – House Committee  On 3/31 to House committee	On 3/28, Passed Senate		Sponsor: Duane Ankney (Senate R)  <a href="http://www.elp.com/articles/2015/03/montana-state-senator-proposes-fees-for-companies-that-close-coal-plants.html">http://www.elp.com/articles/2015/03/montana-state-senator-proposes-fees-for-companies-that-close-coal-plants.html</a>

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## Montana 2015 Midyear

State	Bill Number (URL)	Short Title/Description	Passed/Failed out of Committee (Date)	Passed/Failed out of Legislature (Date)	Signed/Vetoed by Governor (Date)	Notes
		down any coal-fired power plant in MT.				
MT	MT D907 2015 aka S305	Renewable Portfolio Standards: Revises them.	4/20/15: Pending – Draft  On 1/21, Draft ready for delivery			Sponsor: Scott Sales (Senate R)
MT	MT D1853	Renewable Portfolio Standard Laws. Revises them.	4/20/15: Pending - Draft  On 12/8 Draft on Hold			Sponsor: Zach Brown (House D)
MT	MT D2217 2015	Approval of State Plan to Implement EPA Guidelines	4/20/15: Pending - Draft  On 1/26 In draft			Sponsor: Duane Ankney (Senate R) <a href="http://leg.mt.gov/bills/2015/BillPdf/LC2217.pdf">http://leg.mt.gov/bills/2015/BillPdf/LC2217.pdf</a>
MT	MT – HB 465	Prohibits the implementation of certain federal or state	2/27/15:			Sponsors: Theresa Manzells (House R)

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## Montana 2015 Midyear

State	Bill Number (URL)	Short Title/Description	Passed/Failed out of Committee (Date)	Passed/Failed out of Legislature (Date)	Signed/Vetoed by Governor (Date)	Notes
		regulations on wood-burning devices. State agencies may not implement or enforce in any way any state or federal regulation, rule, or policy 1) implementing wood-burning device regulatory programs that impose particulate limits more restrictive than current limits; 2) regulating wood-burning devices installed and in use on or before 1/1/15; 3) requiring wood-burning devices to be taken out of use, replaced or removed because of a change in ownership or occupation.	Missed Deadline for Bill Transmittal			
MT	HB 613  Track on ALE or Legiscan	Allowing counties to review certain federal or state regulations on wood-burning devices; prohibiting requirements to remove certain wood-burning devices.	3/31/15: Missed deadline for bill transmittal			Sponsor: T. Manzella (House R)

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## Montana 2015 Midyear

State	Bill Number (URL)	Short Title/Description	Passed/Failed out of Committee (Date)	Passed/Failed out of Legislature (Date)	Signed/Vetoed by Governor (Date)	Notes
MT	SB 355  Track on ALE or Legiscan	An act revising the use of Federal Brownfields Money at Brownfields Sites.		4/20/15: Passed one chamber  On 4/15, amended version passed Senate  On 4/11, returned to Senate w/amendments  On 2/26, Passed Senate		MT DEQ requested our input on this legislation. We have concerns about the legislation and we are working on a response.

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**Topic: Region 8 Annual Commitments (RAC)**

**Background:**

The Region 8 Annual Commitments (“RAC”) document outlines Region 8’s approach for implementing EPA’s Fiscal Year 2014 – 2018 EPA Strategic Plan, while also focusing on the most significant work in the region, which the National Program Manager (NPM) measures may not fully capture. We will use the full set of NPM measures, in addition to FY 2016 Regional Annual Commitments, to evaluate regional efforts throughout the year. Region 8 began our FY 2016 RAC development, internally, in March of this year.

Tentative RAC schedule:

- 4/2015 – 5/7/15: Region 8 internal comment period
- 5/7/15 – 6/4/15: Responses prepared & changes made, in response to internal comments
- June - July: State & Tribal Partner comment period

**Key RA Messages:**

- The process for FY 2016 RAC development is very similar to that which was used for the last two years; we anticipate that our draft document will be available for states to review, in June / July.
- The document will be made available via email and MAX.gov, from the Region 8 Partnerships & Environmental Stewardship Program. We will accept comments for a four week period.
- As appropriate, the Region 8 *Partnerships & Environmental Stewardship Program* will communicate with state counterparts to incorporate any final RAC measures, which require state efforts, into FY 2016 Performance Partnership Agreements and Performance Partnership Grant workplans.
- The Region relies on our state partners to meet both national and regional commitments; therefore, we thank you for your input into this process.

**Contact:** Stephanie Vuong, 303-312-7824

## **Topic: Multi Year Grant Workplans**

### **Background:**

The PPA serves as the workplan for the PPG in all R8 states. The PPG's in all R8 states are multiyear, but the PPAs (grant workplans) are revisited annually. A workgroup was formed in 2014 to develop ways to move to multiyear guidance and to eliminate barriers/develop means toward multiyear workplans. Gary Baughman (CDPHE, Hazardous Waste Director) serves on this workgroup.

As a result of workgroup efforts, the FY16-17 NPM Guidances are two year guidances that emphasize earlier and more meaningful state and tribal engagement in priority and commitment-setting; clear and transparent support for flexibility within the NPM Guidances; and better alignment of NPM and grant guidances. ECOS recommended that NPM guidances be structured so that they minimize the need for addendums in the second year.

**Colorado, Utah, South Dakota, North Dakota, and Montana have expressed interest in moving to multiyear PPAs as long as it allows for greater programmatic flexibility and emphasizes program outcomes/results over activities.**

### **Key RA Message:**

- States and R8 can use multiyear workplans to improve joint planning and priority setting and to create efficiencies.
- The EPA is committed to working with interested states to transition to multiyear agreements.
- Please ask your program contacts to work with their EPA counterparts to look into how commitments could be adjusted to align with multiyear workplans. Annual commitments need not be showstoppers for the transition to multiyear workplans if we can reach agreement on how we'll reach agreed upon outcomes and results.

**Contacts:** Gerard Bulanowski, 312-6141; Melanie Wood, 312-7006

## **Topic 1: Billings, Montana 1-Hour SO<sub>2</sub> Nonattainment Area**

### **Background:**

The state of Montana's SO<sub>2</sub> monitoring data is now showing that the Billings area is meeting the 1-hour SO<sub>2</sub> National Ambient Air Quality Standard (NAAQS). Governor Bullock questioned EPA at a recent National Governors Association meeting about why this area is still a nonattainment area when current monitoring data clearly shows no violations of the SO<sub>2</sub> NAAQS.

The Montana Department of Environmental Quality (MDEQ) submitted a Clean Data Determination (**CDD**) request to EPA Region 8 on January 16, 2015 regarding the 1-hour SO<sub>2</sub> nonattainment area in part of Billings. This area was designated nonattainment in August 2013 based on 2009-2011 monitoring data. The nonattainment area is essentially a circle that includes the violating monitor and the 153 MW PPL-Montana Corette coal fired power plant. PPL Montana has announced that the Corette power plant will permanently close in August 2015. The 2012-2014 monitoring data demonstrates the area has attained the standard. This is well in advance of the October 2018 attainment date. **[There was a recent Congressional staff inquiry to EPA about the possible use of the Corette station property to install wind generation. This inquiry appears to be the result of a constituent's inquiry to the staff. We have no information on whether PPL-Montana would be interested in selling the Corette property for such a use or if it is even a good location for a wind energy facility.]**

Montana must submit a formal redesignation/maintenance state implementation plan (SIP) in order for EPA to designate the area to attainment. MDEQ **has drafted this SIP** in coordination with EPA's Air Program staff and **submitted it as an informal draft** for our review in April 2015.

**Based on direction from OGC, we do not plan to act on MDEQ's CDD request, but instead use the clean data to make a determination of attainment when we act on Montana's redesignation/maintenance SIP. We are in discussions currently with Headquarter's about using a weight of evidence approach that focuses on the closure of Corette, and the associated SO<sub>2</sub> reductions that would be gained, for our approval of the redesignation/ maintenance SIP.**

We are committed to act expeditiously on the plan when it is received, so the area can be designated to attainment status. In order to prioritize action on this SIP, the Air Program Director and Montana's State Air Director (Dave Klemp) have agreed to move an action slated for completion in FY2015 in the state's 4-Year SIP Management Plan to FY2016.

Tentative Schedule (based on a MT August 2015 submittal although MDEQ has indicated that they plan to submit the redesignation request earlier, which would move the schedule up accordingly)

- August 31, 2015 – Montana submits Billings SO<sub>2</sub> redesignation/maintenance SIP to Region 8
- November 2015 – Region 8 signs proposed rulemaking on Billings SO<sub>2</sub> redesignation/maintenance SIP
- November 2015 to January 2016 – Proposal publishes and 30-day comment period occurs
- April 2016 – Region 8 signs final rulemaking on Billings SO<sub>2</sub> redesignation/maintenance SIP

**Contact:** Carl Daly, OPRA Air Program, 312-6416 00

**Key RA Messages:**

- I want to thank Montana DEQ for submitting an informal draft of its redesignation/maintenance SIP for our early review and working closely with us during the draft SIP development.
- Separate from the Billings SO<sub>2</sub> non-attainment area, Montana does not currently have any monitors violating the 1-hour SO<sub>2</sub> standard or areas with large SO<sub>2</sub> sources that would require EPA to designate by July 2016, as specified by a consent decree. Therefore, EPA will designate areas in Montana for the 1-hour SO<sub>2</sub> standard by December 31, 2017 or December, 31, 2020.



**Topic 2: Clean Air Act Section 128 State Board Requirements for Infrastructure State Implementation Plan (SIP)**

**Background:**

CAA §110(a)(2)(E)(ii) requires SIPs to implement CAA §128. EPA interprets this to mean that compliance with this requirement is necessary for EPA to approve an infrastructure SIP, after each NAAQS revision. CAA §128 requires SIPs to contain provisions governing state boards that “approve permits or enforcement orders.”

- 128(a)(1): A majority of the members of the board must “represent the public interest and not derive a significant portion of their income from persons subject to permits or enforcement orders”; and
- 128(a)(2): Members of the board must “adequately disclose potential conflicts of interest.”

Montana has a multi-member board that hears appeals of permits and enforcement orders.

For Montana’s 1997 ozone NAAQS infrastructure SIP, we negotiated a CD deadline for EPA action of 6/30/11.

- We received adverse comments on the proposed approval for CAA §128 because Montana’s SIP does not contain any provisions that address CAA §128 and their statute does not fully meet the requirements either.
- We renegotiated the CD to defer action for CAA §128 in hopes of new legislation. No legislation happened in 2013; no session in 2014.
- Final disapproval for CAA §128 was signed July 24, 2013, published August 6, and effective September 5. EPA has a CAA duty to promulgate a FIP by September 5, 2015.
- EPA is not under an actual CD deadline for the FIP, but we did agree to a WHEREAS clause with a 1-year schedule (expired July 24, 2014).

The Air Program has been working with Montana on this issue for the past couple of years. In October 2014, Dave Klemp (Montana Air Director) sent us draft SIP language for review to meet CAA §128 requirements. The Air Program has been working on revisions to this language with the state.

We received the latest revised New Rule I, II, and III draft language on March 26, 2015 and responded with our comments. **Montana’s attorney general’s office and the state’s Air Program have reviewed our comments and agreed to address our comments/make necessary revisions. The next step is for the New Rule language to go to Montana’s Board of Environmental Review for approval. The state’s package to the Board will not be ready for the May 29<sup>th</sup> Board meeting, so the plan is to take to the Board’s July 31<sup>st</sup> meeting.**

**Contact:** Carl Daly, OPRA Air Program, 312-6416

**Key RA Messages:**

- We look forward to the Board approving the New Rule on **July 31<sup>st</sup>**.

### **Topic 3: CAA Section 111(d) Standards for Existing Power Plants**

#### **Background:**

- EPA signed the CAA Section 111(d) proposed rule on June 2, 2014, and published it in the Federal Register on June 18, 2014. In October 2014, EPA issued a Notice of Data Availability and a Supplemental Proposal for Tribes and Territories, and in November 2014, EPA issued a Rate-to-Mass Technical Support document. On December 1, 2014, the extended public comment period ended. EPA received over 4.3 million comments.

**Contact:** Callie Videtich, OPRA IO 312-6434, Carl Daly, OPRA Air Program, 312-6416, Laura Farris, OPRA Air Program, 312-6388

#### **Key RA Messages:**

- EPA is on track to issue the final 111(d) rule in mid-summer 2015, along with a proposed model Federal Plan. We will let the states know when EPA has transmitted a draft final rule to OMB for their review. Submittal to OMB is expected sometime in May, 2015 [update status prior to SLT mid-year meeting].
- EPA tools and resources that states might find useful in the development of their 111(d) State Plans can be found in the Clean Power Plan Toolbox on EPA's Clean Power Plan website.
- EPA is preparing additional materials and training for states on the final rule after its release.
- EPA held implementation conference calls for states/tribes and communities in February and March, 2015, respectively.
- The President's FY16 budget request includes \$35 million in support for the Clean Power Plan (\$25 million in grants to help states and \$10 million for federal support to develop tools benefitting all states). It also includes a \$4 billion Incentive Fund available to states that go above and beyond the guidelines that will be in the final Clean Power Plan (by achieving early emissions reductions, and/or exceeding emissions reduction targets before the dates set in the guidance).

### **Topic 4: CAA Section 111(b) Standards for New Power Plants**

#### **Background:**

- EPA signed the CAA Section 111(b) proposed rule September 20, 2013, and published it in the Federal Register on January 8, 2014 (which also rescinded the April 2012 proposal). On May 9, 2014, the extended public comment period ended. EPA received over 2.6 million comments.

**Contact:** Callie Videtich, OPRA IO 312-6434, Carl Daly, OPRA Air Program, 312-6416, Laura Farris, OPRA Air Program, 312-6388

#### **Key RA Message:**

- The final rule for new power plants will be issued with the final 111(d) rule in mid-summer 2015.

**Topic 5: Upcoming New 8-Hour Ozone National Ambient Air Quality Standard (NAAQS)**

**Background:**

- EPA proposed on November 25, 2014 to lower the primary and secondary ozone NAAQS to a level between 65 and 70 ppb and also took public comment through March 17, 2015 on retaining the current standard of 75 ppb or lowering the standard to 60 ppb. This rule will be finalized by October 1, 2015 per court deadline.
- Background ozone is formed by processes beyond local controls, such as transport from the stratosphere, biogenic VOC and NO<sub>x</sub>, wildfires, lightening, non-U.S. anthropogenic emissions of ozone precursors and global methane development. The influence of background ozone is larger over the western states, especially at higher elevation sites in the late spring/early summer.
- Based on the most recent monitoring data and the lowest possible new ozone NAAQS (60 ppb), Montana will not have any ozone nonattainment areas.

Potential Montana Nonattainment Area Designations Based on 2012-2014 monitoring data.

- Ozone NAAQS at 70 ppb:  
Montana has no areas with a design value over 70 ppb based on 2012-2014 data.
- Ozone NAAQS at 65 ppb:  
Montana has no areas with a design value over 65 ppb based on 2012-2014 data.
- Ozone NAAQS at 60 ppb:  
Montana has no areas with a design value over 60 ppb based on 2012-2014 data.

**Contact:** Carl Daly, OPRA Air Program, 312-6416

**Key RA Messages:** None

**Governor Steve Bullock Comments on Clean Power Plan  
April 2015**

1. The State of Montana (Governor and DEQ) comments on the Clean Power Plan were submitted to the docket in December 2014 stating:

- Montana is proud that they are an energy producing state, sees the effects of climate change, and recognizes that the cost of inaction is high. They are in favor of climate action that keeps coal in play.
- They are concerned about the economic effects of the Plan, especially as it may affect their coal industry. They feel that the Administration has not done enough to advance clean coal technologies.
- BB3 should rely upon RE generation for compliance, rather than consumption to be consistent with the generation-based accounting for the EGUs and nuclear facilities.
- Use of the REC accounting system would provide inaccurate and misleading results.
- It is a mistake to interpret increases in RE and EE as decreases in coal generation [e.g., a MW of coal power  $\neq$  a MW of wind power].
- BB4 savings rates should be capped at 1.5% and 0.2% incremental improvements per year, which are both significant challenges for Montana.
- EPA should permit states to segment their state plan into either geographic or economic groups with separate multi-state compliance plans for each as long as they can demonstrate compliance with their goal.

2. On September 19, 2014, Governor Bullock wrote a letter to the citizens of Montana on the Clean Power Plan saying that he is concerned about the impacts of climate change on the state's economy and environment, mentioned the Clean Power Plan's goals for the state and the flexibility it provides, and described the opportunities it presents. The letter was accompanied by a White Paper from the DEQ discussing compliance scenarios.

3. The Attorneys General of Montana, North Dakota, South Dakota, Utah, and Wyoming signed a comment letter on the CPP dated November 2014 with other states stating that the proposed rule has numerous legal defects, each of which provides an independent basis to invalidate the rule in its entirety, including:

- The Clean Air Act unambiguously prohibits EPA from regulating power plants under section 111(d) now that EPA has chosen to regulate those plants under section 112
- The proposed section 111(d) rule is illegal because EPA has not finalized any lawful rule for equivalent new sources
- Section 111(d) cannot be used to override state authority to manage power resources
- Section 111(d) limits EPA's role in the first instance to procedure, not substance
- Section 111(d) is limited to source-level, inside-the-fence line, unit-by-unit emission reduction measures
- EPA's proposal conflicts with the Federal Power Act

4. Colorado, Montana, North Dakota, South Dakota, Utah, and other Western States signed a comment letter on the CPP dated November 2014 [facilitated by the Center for a New Energy Economy] stating that the final rule should:

- Allow for a range of planning options, including those that support flexible, multistate compliance options without necessarily requiring states to enter into a single regional plan
- Allow for flexible interim compliance targets that provide room for a range of effective emissions reduction strategies

- Coordinate action on tribal sources with compliance planning in the Western region
- Allow regional coordination, while at the same time allowing states to submit individual plans if they choose to do so
- Provide states multiple options for capturing the benefits of state energy efficiency and renewable energy programs
- Allow states to take either a rate-based or mass-based approach to achieving state goals
- Preserve the states' role as primary implementers of the section 111(d) performance standards

[The State has participated in all four of the CNEE meetings on the Clean Power Plan]

5. In December, 2014, the Montana Attorney General submitted joint comments on the Clean Power Plan to the docket with the Crow Nation stating that they have grave concerns about the negative impact the rules could have on the Crow Nation and its citizens because of the revenues they receive from coal mining, and that there was a lack of meaningful consultation with the Tribe before the rule was proposed rule.

## **Topic: Clean Water Rule**

### **Background:**

Another big priority for EPA this summer is finalizing the Clean Water Rule, which seeks to clarify the application of the Clean Water Act to our nation's waters.

Our action is intended to get clarity and consistency in the application of the Clean Water Act across all states. Not all state regulations are the same. And we also have to consider that State Water quality programs protect Waters from point source pollution discharges, but don't always apply to oil spills or dredge or fill activities. That's where defining Waters of the U.S. becomes important. There are some water bodies out there without protection, and they play a critical role in the health of all our major rivers and streams.

Continuing with the current implementation process is not acceptable. There are places where we are not adequately protecting waters that are critical to protect. In addition, there are far too many costly case-by-case decisions involving waters that are not necessary to protect. And that's a waste of time and money. We know that while all waters are to some extent connected, some waters impact downstream water quality more than others. And we can do a much better job of defining which ones should and must be protected. That is the heart of the rule.

EPA held an extensive comment period on the proposed rule. Over the past year, we've held more than 400 meetings across the country and received more than one million public comments from government agencies, farmers, manufacturers, business owners, hunters and anglers, and others.

We're now reviewing that information to craft a final rule that responds to what we've heard. On April 3 we sent a draft to the Office of Management and Budget for interagency review.

While the final rule will speak for itself, I will say that when it is issued, it will include substantive changes based on public comments, consistent with the law and the science.

**We're looking at better defining how protected waters are significant.** A key part of the Clean Water Rule is protecting water bodies, like streams and wetlands, which have strong impacts downstream – the technical term is “significant nexus.” Our final rule will respond to requests for a better description of what connections are important and how agencies make that determination.

**We'll be defining tributaries more clearly.** We've heard feedback that our proposed definition of tributaries was confusing and ambiguous, and could be interpreted to include erosion in a farmer's field, when that's not our aim. So we're looking at ways to refine that definition, to be precise about the streams we're talking about, and to make sure there are bright lines around exactly what we mean.

**We're also providing certainty in how far safeguards extend to nearby waters.** The rule will protect wetlands that are situated next to protected waterways like rivers and lakes, because science shows us they impact downstream waters. We will provide a clear definition about what waters are considered adjacent waters.

**We're focusing on tributaries, not ditches.** Our initial proposal talked about upland ditches, and we got feedback that the word “upland” was confusing. Our final rule will clarify that we are limiting protection to only those ditches that function like tributaries and can carry pollution downstream—like those constructed out of streams.

**We're also preserving Clean Water Act exclusions and exemptions for agriculture.** We will protect clean water without getting in the way of farming and ranching. Period. Normal agriculture practices like plowing, planting, and harvesting have always been exempt from Clean Water Act regulation; this rule won't change that.

**Contact:** Joan Card, 303-312-6468

**Topic: Libby Asbestos Superfund Site**

**Background:**

1999 - EPA began an emergency response action.

2001 – Removal Actions began

2002- The site was added to the National Priorities List (NPL)

2009 – Public Health Emergency declared

2014 – Toxicity values for Libby Amphibole (LA) asbestos published and EPA Region 8 released a draft Human Health Risk Assessment

2015 – EPA issued a Proposed Plan, identifying EPA and MDEQ’s preferred alternative to complete remaining cleanup work for the project

**Site-Wide:** May 2015 - EPA Region 8 issued a proposed plan identifying EPA and MDEQ’s preferred alternative to complete remaining work for the Libby Asbestos project. EPA will continue to remove contaminated soil and building materials from residential and commercial properties. Institutional controls will be developed to manage any future encounters with LA asbestos contamination that may be left behind. Public comment on the proposal will be accepted through early July 2015, with a final remedy selected in a Record of Decision by December 2015.

**Key Issue:** There is concern about the cost of and responsibility for a long-term IC program. EPA has \$11.8m from the settlement with WR Grace, and MDEQ has \$5m from the Grace settlement to be used for 10% cost share and/or ICs. MT Senate Bill 20 was recently signed by Governor Bullock that would provide \$600,000 annually for O&M and ICs for the Libby project beginning in about 2018.

**Mine:** WR Grace is nearing completion of the Remedial Investigation, identifying nature and extent of contamination. Work is beginning on the Feasibility Study which will identify alternatives to address contamination at the mine and surrounding forested areas. EPA Region 8 is coordinating this work closely with MDEQ, USFS, DNRC, Lincoln County and numerous other local stakeholders. Test burns are planned for May to gather additional information about exposures to asbestos that may result from wildfire or prescribed burns in the forest.

**Contact:** Rebecca Thomas, EPR-SR 312-6552

**Key RA Messages:**

**Projected Milestones:**

2015 – Site-wide Record of Decision

2017 – Mine Site Record of Decision

**MDEQ/Remediation Division, Natural Resource Damage Program, and EPA working relationship**

**Background:**

EPA has had a contentious relationship with the State of Montana on Superfund and RCRA Corrective Action cleanup sites where there is a significant role for the Natural Resource Damage Program. EPA has struggle with conflicting state interests between MDEQ and NDRP and an adversarial role assumed by NRDP. These concerns were initially elevated by Jim Martin to Governor Bullock and subsequently moved forward by Shaun McGrath. The Governor's office and previous MDEQ director, Tracy Stone-Manning, asked EPA to put our concerns on hold until the retirement of the NRDP director in December 2014. Due to management changes in the Governor's office there has been a delay in the retirement of the director. We now understand that the director will be fully retired sometime in June 2015.

In addition to coordination with the Governor's office, Shaun McGrath raised these issues with MDEQ's new director, Tom Livers. Over that last three years, MDEQ management has been making changes within the Remediation Division to improve efficiencies and communications with EPA. Director Livers committed to on-going relationship improvements.

**Updates:**

Rob Collins, NRDP Director, is retiring around June 2, 2015. Governor's Office has re-advertised the permanent position and committed to EPA to find a candidate that could provide a more professional relationship.

Tom Stoops, MDEQ Remediation Division, Federal Superfund Bureau Chief, has brought some stability to the state program and is providing better outreach and communication to EPA Montana Office. MDEQ also made some staff changes to the Butte site and we are seeing better technical coordination on the team.

**Contact:** Julie DalSoglio, Montana Office Director, 406-457-5025

**Key RA Message:**

- EPA wants to continue to develop and strengthen working relationships MDEQ and NRDP.



*For RA Background Only*

**Topic: Bridger Pipeline Spill in Glendive, Montana**

Bridger Pipeline LLC– Yellowstone River Spill

Spill Date & Location: January 17, 2015, Dawson County, Glendive, MT

Material Spilled: 1225 barrels (51,450 gallons) of crude oil

Waterway Affected: Yellowstone River into the Missouri River

Responsible Party: Bridger Pipeline, LLC

**Background/Chronology:**

1/17/2015- According to Bridger Pipeline, LLC (Bridger): its control room controller in Casper, Wyoming, noticed some abnormal pressure readings on Bridger's Poplar Pipeline. The pipeline system pressure alarms sounded, and the pipeline was shut down. Bridger stated that it activated its emergency response plan and notified relevant local, state, and federal authorities. The company control room operators shut down the pipeline. The Regional Administrator was kept apprised of response activities and on 03/20/2015, the OSCs demobilized.

536.6 barrels of oil (about 22,537 gallons) out of more than 1,200 barrels released were collected. Most of the collected oil was recovered from the damaged pipeline and did not enter the Yellowstone River. On 4/8/2015, the Army Corps of Engineers authorized Bridger, to install a new directional boring, 2,700 feet long pipeline, including 1,000 feet bored approximately 40 feet below the Yellowstone River channel bottom.

**Status:**

- On 2/25/15, the EPA had a call with Peter Katchmar from the Pipeline Hazardous Materials and Safety Administration (PHMSA) to obtain more details on PHMSA's knowledge of the pipeline and the break as well as to learn if Bridger had any actions taken against them in the years prior to the break in the pipeline.
- In March, the EPA had a series of discussions with MDEQ about jointly taking enforcement against Bridger. On 3/25/15, MDEQ advised during a phone call that it would pursue its own enforcement case separate from the EPA. MDEQ shared their intentions to obtain from Bridger reimbursements for MDEQ's costs, for Bridger to follow MDEQ's clean up requirements and for MDEQ to assess a penalty for the spill. MDEQ is planning to negotiate an Administrative Order on Consent. We had difficulty sharing pre-decisional information due to the MT open records law, but agreed to share our 308 information request with MDEQ once finalized. On 4/3/15, the EPA issued its 308 information request to Bridger. On 4/20/15, Bridger requested a 30-day extension to respond to the 308. On 4/21/15, the EPA granted the request. Bridger's response is due on 06/03/15.
- The EPA anticipates our proposed penalty will exceed the Administrative cap of \$187,500. Formal enforcement would need to be referred to DOJ for civil judicial action. We will continue to coordinate with the state on injunctive relief needed.
- On 4/7/15, MDEQ issued its information request to Bridger, incorporating several of the EPA's specific requests.
- Following our receipt and analysis of Bridger's 308 response, we currently expect to refer this matter to DOJ.

**Contacts:** Sheldon Muller (303) 312-6916, Darla Hohman (303) 312-6263, or Gwen Campbell (303) 312-6463

**Key RA Messages:**

- Enforcement staff is gathering information from Bridger, PHMSA and the Corps. We continue to work closely and coordinate with MDEQ. When all information is evaluated, decisions regarding enforcement will be made.

**Topic: Electrical Conductivity/Sodium Adsorption Ratio Water Quality Standards**

**Background:**

- On October 13, 2009, the U.S. District Court in Wyoming vacated EPA's approvals of Montana's 2003 and 2006 WQS for EC/SAR and remanded the matter to EPA.
- This occurred after multiple years of negotiations with the State of Wyoming, Montana, and several coal bed methane (CBM) companies failed to reach an agreement.
- EC and SAR are parameters related to salinity and are of concern in discharges associated with the CBM industry. Hence, CBM stakeholders are concerned with additional requirements that may occur once EC/SAR standards are in effect. We expect the CBM industry to scrutinize our remand actions once complete.
- Generally, agricultural uses are of primary concern regarding excess EC and SAR; therefore, agricultural stakeholders are interested in having effective EC/SAR standards in place to protect this use. These stakeholders have been monitoring our progress on the remand action and will scrutinize our remand actions once complete.
- Under the court order, EPA was ordered to:
  - Consider the entire 2003 administrative record and subsequent records that amount to more than 11,000 pages of documents to review and assess.
  - Determine whether the 2003 numeric standards are based on appropriate technical and scientific data – this requires an extensive and detailed technical analysis including all new science available since 2003. Our technical review must be scientifically defensible and we expect significant scrutiny on this by stakeholders.
  - Make plain our course of inquiry, analysis and reasoning for our action as to the 2003 and 2006 standards, including whether appropriate scientific data supports the actual number values adopted by the State of Montana; and
  - Clarify that the EPA is not approving classification of the Powder River and Little Powder River as Tier 2 under antidegradation.
- Under the CWA, review of WQS is to be accomplished in 60 to 90 days. We have exceeded this deadline and are legally vulnerable (remand occurred in 2009).
- The Region has made significant progress in our technical analysis of the EC/SAR standards and expects to complete our action in FY15. We have been updating interested agriculture stakeholders of our progress to help alleviate concerns.
- MDEQ contacted members of the R8 Water Quality Unit on 5/14/15 to let us know that Tom Livers may bring this topic up at the RA mid-year and request that R8 not act on the remanded standards prior to a discussion on implementation issues that may arise upon our action.
- The WQU and MOO plan to meet with MDEQ in late June to discuss the implementation. The WQU has a decision briefing scheduled with the RA on our remanded standards on July 22.
- This timing should support Tom Livers' request.

**Contact: Tonya Fish, 303-313-6832; Sandra Spence, 303-312-6947**

**Key RA Message:**

- Region 8 is in the process of responding to a remand from the U.S. District Court in Wyoming that vacated EPA's approvals of MT's 2003/2006 water quality standards (WQS) for electrical conductivity (EC) and sodium adsorption ratio (SAR).

- The EC/SAR remand action is one of the Water Quality Unit's (EPR-EP-WQU) highest priorities and the Region is behind schedule in completing our action (60-90 day statutory deadline for action has been significantly exceeded).
- The Region has made significant progress on the technical analysis required to complete our review over the last fiscal year.
- We expect to complete our action in FY2015.
- We are working with MDEQ to schedule a meeting to discuss implementation concerns in late June. This meeting will occur prior to us being ready to take action on the standards.

**Topic: Montanore Draft Record of Decision (ROD)**

**Project-related schedule highlights:**

- **May 2015:** objections period ends and beginning of resolution period (and ROD revisions)
- **June 2015:** wetland managers' meeting – 404 discussion
- **August 2015 (or later):** resolution period ends and revisions to ROD complete
- **Fall 2015 or later:** Kootenai National Forest (KNF) and MDEQ final RODs (separate) and Final EIS
- **Fall 2015 or later:** 404 permit and 401 Certification
- **Draft ROD comment target:** May 29, 2015

**Background:**

- Montanore Mine is a proposed underground silver and copper mine in the Cabinet Mountains Wilderness Area approximately 18 miles southwest of Libby, MT. Another mine (Rock Creek) has also been proposed in the Cabinet Mountains Wilderness Area south and west of Montanore.
  - The Montanore evaluation adit is already partially in place but not complete.
- Joint KNF and MDEQ EIS; separate RODs
- Major environmental concerns include impacts to pristine wetlands, streams, and lakes; groundwater drawdown; and impacts to three threatened and endangered species: the bull trout, Canada lynx, and grizzly bear.
  - Affected streams include critical bull trout habitat
  - Direct impacts of the tailings storage facility include approximately 8 acres wetlands and 8,000-11,000 linear feet streams
- Data to characterize effects due to groundwater drawdown are limited.
- In Spring 2014, the Fish and Wildlife Service determined “no jeopardy” to the threatened bull trout and grizzly bear and concurred with the Forest Service that the Canada lynx and wolverine are “not likely to be adversely affected.”
  - FWS determined that “take” of grizzly bear, bull trout and bull trout critical habitat would occur and, consequently, is requiring mitigation.
- EPA rated the Draft EIS EU-3 (“environmentally unsatisfactory-inadequate information”) in June 2009 and the Supplemental Draft EIS EO-2 (“environmental objections-insufficient information”) in December 2011.
- After review of the public notice for the 404 permit, EPA notified the Corps that the project will affect aquatic resources of national importance, per our Memorandum of Agreement under CWA Section 404(q), in February 2012.

**Contact: Maggie Pierce, 303-312-6550**

**Options and Possible Actions:**

- No Action until Final EIS filed with EPA (not recommended - little opportunity for effect)
- We recommend providing a comment letter detailing outstanding concerns and recommendations.
- We also recommend conducting outreach to determine why previous major recommendation for additional public comment period not incorporated.
  - RA call Dave Schmid, Acting Regional Forester, Forest Service Region 1 (*before end of May after program staff call KNF*) to

- Follow-up on last fall's conversation with Faye Krueger (now retired FS Region 1 Regional Forester)
- Express EPA request for 1) involvement in TSF final design, 2) review of revised 3D groundwater model, and 3) review of geochemical data
- ARA/NEPA Program Director call Chris Savage, Kootenai National Forest Supervisor, to inquire about previous recommendation and describe concerns and recommendation to address them (*before end of May*)
- RA call Tom Livers, MDEQ Division Director, for status update and check-in (*before end of May*)

**Topic: Columbia Falls Aluminum Site, Montana**

**Background:** The Columbia Falls Aluminum Company (locally referred to as CFAC) site is a defunct primary aluminum smelter located approximately two miles north east of Columbia Falls, MT. Preliminary concerns include releases of cyanide, fluoride and metals to groundwater and surface water from various sources at the site. Groundwater is used near the facility for residential drinking water purposes. Flathead River sediment have above background contaminant concentrations.

EPA has proposed to add the Columbia Falls Aluminum site to the National Priorities List (NPL). This decision was supported by Governor Bullock in a February letter to EPA. EPA has coordinated with MDEQ throughout the process.

EPA has proposed to add the site to the NPL and is currently in a public comment period until June 2, 2015.

Although a specific timeframe for finalizing the site onto the NPL is unknown at this due to the fact that the public comment period is ongoing, the earliest EPA could finalize the site onto the NPL is fall, 2015. Adding the site to the NPL ensures a thorough investigation and, if necessary, remediation will occur at the site.

**Contacts: Johanna Miller, 312-6804, Victor Ketellapper, 312-6578**

**Key RA Messages:**

- This site is a priority for EPA, as indicated by EPA proposing to add the site to the National Priorities List (NPL).
- EPA is currently soliciting comments on this decision until June 2, 2015.
- EPA updates the NPL two times each year; the earliest EPA could finalize the site onto the NPL is this fall, although that is not certain at this point due to the ongoing public comment period.
- Adding the site to the NPL begins the process to determine the nature and extent of contamination and evaluate remedial alternatives.

**Topic: NPDES Permit for Boulder, MT and Implementation of Nutrient Variance**

**Background:**

EPA received Montana's Clean Water Act (CWA) § 303 water quality standards (WQS) nutrient rule submission on August 15, 2014. Montana is the first state to adopt a multiple-discharger approach for nutrients. In our action letter on Montana's submission, we approved the general variances based on DEQ's economic demonstration that dischargers would need to install Reverse Osmosis (RO) to meet the numeric nutrient criteria end-of-pipe and the understanding that even RO will not even reliably achieve the total nitrogen limits. EPA approved the general variance based on the finding that this set of assumptions was reasonable and demonstrated economic hardship.

The draft permit for the Boulder WWTP raised questions regarding the application of the general variance based on the site-specific details for Boulder. Due to the availability of instream dilution, Boulder does not have to meet the criteria at end of pipe making the economic analysis done for the general variance inapplicable to Boulder. However, MTDEQ has a statute which gives a general variance to all facilities. If MTDEQ issues the permit with the general variance, EPA faces the question of whether or not to object to the permit to enforce our approval of the standard and reduce our litigation risk on that approval. A further complicating factor is that Boulder is a small town that is voluntarily upgrading from a failing lagoon system to a mechanical plant to make progress on nutrients. MTDEQ has been pushing to issue the new permit prior to completion of the mechanical plant.

EPA and Montana have had numerous discussions about this issue including a conversation with Tom Livers, MTDEQ's director. During the most recent conversations, MTDEQ indicated a willingness to consider an individual variance for Boulder. EPA and MTDEQ staff are discussing the possibility of continuing the administrative extension of the permit to allow the mechanical plant to discharge, yet also providing the agencies more time to discuss an individual variance. To support this discussion, EPA has begun an economic analysis for Boulder to support an individual variance; preliminary results are expected by May 15. We anticipate resuming discussions the week of May 18 when key MTDEQ management return to the office.

Boulder is not the only facility which will not qualify for the general variance. The Wastewater Unit is working with MTDEQ to fund a contract to evaluate the universe of facilities which are outside the variance and develop an economic analysis which the state could consider in its 2017 variance update.

**Contact:** Colleen Rathbone, 312-6133; Erin Perkins, 312-6922; Everett Volk, 312-7290

**Key RA Messages:** We will continue to work with MTDEQ to come to a satisfactory solution on the Boulder permit, and the other facilities that may be in a similar situation. We appreciate the MTDEQ's forbearance in not issuing the permit for Boulder while we work through this issue.